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3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 19th, 2012**

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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 LLS AMERICA, LLC,

12 Debtor.

No. 09-06194-PCW11

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14 BRUCE P. KRIEGMAN, solely in
15 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

16 Plaintiff,

Adv. No. 11-80153-PCW

17 vs.

18 RORY BJARNASON and CATHY
19 BJARNASON,

20 Defendants.

MEMORANDUM DECISION RE:
DEFENDANTS RORY AND CATHY
BJARNASON'S MOTION TO
DISMISS (ECF No. 9)

21 This adversary is one of hundreds commenced by the trustee of the LLS America,
22 LLC ("LLS America") bankruptcy estate which adversaries seek to recover money paid
23 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
24 conducted by the debtor. Defendants Rory and Cathy Bjarnason filed a motion to dismiss
25 on December 15, 2011, ECF No. 9.

26 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written
27 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss
28 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

MEMORANDUM DECISION RE: . . . - Page 1

1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
2 raised in the subject motion are the same as those raised in the Previous Decision. Many
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By affidavit of Duane Swinton (ECF No. 19), the trustee presented evidence in
5 this case that the defendants loaned or invested an unknown amount with either none or
6 an unknown number of promissory notes issued. In 118 distributions occurring between
7 July 2002 and Aug 2008, the defendants received \$212,150 (CAN). By declaration (ECF
8 No. 12), the defendants presented evidence that they reside in Canada, rarely travel to
9 the United States, and each of the promissory notes listed a Canadian entity as borrower
10 with distributions made from Canadian entities. The declaration further states that the
11 loans or investments were solicited in Canada, but no details were provided regarding
12 the manner of solicitation.

13 The grounds for dismissal in the subject motion are: (1) ineffective service of
14 process; (2) improper extraterritorial application of United States bankruptcy law; and
15 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
16 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
17 forth in the Previous Decision and is applicable to the subject motion.

18 As in the Previous Decision, one basis for the request to dismiss is the lack of
19 personal jurisdiction. Unlike the situation in the Previous Decision, these defendants did
20 not file a proof of claim in the underlying bankruptcy case of LLS America. These
21 defendants did, however, seek affirmative relief in this adversary. As concluded in the
22 Previous Decision, by filing a motion to withdraw reference of this adversary to the
23 District Court for Eastern District of Washington, the defendants requested a
24 determination whether this court or the District Court had authority to enter final orders
25 in this adversary. That motion sought a ruling on a substantive legal issue. By requesting
26 a ruling on the merits of a legal issue in this case, the defendants have consented to the
27 exercise of jurisdiction by the federal courts of the Eastern District of Washington.

28 The defendants filing the subject motion had sufficient minimum contacts to

1 establish personal jurisdiction. Many of those facts in the Previous Decision are
2 applicable to the defendants in this case. As stated in the Previous Decision and in the
3 court's oral ruling (ECF No. 715) on the Chapter 11 Trustee's Nunc Pro Tunc Motion
4 for Substantive Consolidation of Debtor and Non-Debtor Estates (ECF No. 449) in the
5 underlying LLS America bankruptcy case No. 09-06194-PCW11, the promissory notes
6 generally provided that any one of the group of LLS companies was responsible for
7 repayment. That group of companies was managed and operated in Spokane,
8 Washington. This adversary complaint alleges that the defendants knew or should have
9 known that they were participating in a Ponzi scheme. Unlike the defendants in the
10 Previous Decision, these defendants did not receive commissions, i.e., compensation for
11 soliciting or locating other investors or lenders. However, the economic activity in which
12 the defendants did engage was sufficient to establish minimum contacts for personal
13 jurisdiction. For these reasons, the motion to dismiss is **DENIED**. Counsel for the
14 defendants shall submit an order consistent with this decision.

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16 ///END OF MEMORANDUM DECISION///
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